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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 228

TROY LAUNDRY COMPANY, A CORPORATION, AND F.
R. MILLER, VICE PRESIDENT OF TROY LAUNDRY
COMPANY, PETITIONERS

v.

W. WILLARD WIRTZ, CHAIRMAN OF THE NATIONAL
WAGE STABILIZATION BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT*

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for the Southern District of California, Central Division (R. 80-82) is not reported. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit (R. 116-124) is reported at 155 F. 2d 53.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 27, 1946 (R. 124-125).

The order of the Circuit Court of Appeals denying petitioners' application for rehearing was entered on May 23, 1946 (R. 126). The petition for a writ of certiorari was filed on June 24, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the courts below properly enforced compliance by petitioners with a subpoena and a subpoena *duces tecum* issued under Section 7 (b) of the War Labor Disputes Act by the chairman of the National War Labor Board in connection with a hearing before the Enforcement Division of the Tenth Regional War Labor Board held to determine whether petitioner corporation had violated or was violating the Stabilization Act of 1942.

STATUTES AND EXECUTIVE ORDERS INVOLVED

The relevant portions of the statutes and executive orders involved are set forth in the Appendix, pp. 18-27.

STATEMENT

Petitioner, Troy Laundry Company, is a corporation doing business in Los Angeles, California (R. 3-4, 35-37, 49, 83). Petitioner Miller is the Vice President of the Company (R. 2, 4, 15, 17-18, 36, 83). In 1944 the appropriate officer of the

Tenth Regional War Labor Board,¹ pursuant to the Stabilization Act of 1942, 56 Stat. 765, 50 U. S. C. App., Supp. V, § 961 *et seq.*, *infra*, pp. 20-21, Executive Order 9250, 7 F. R. 7871, *infra*, p. 25, and the regulations of the Director of the Office of Economic Stabilization, instituted an investigation to determine whether petitioner corporation had violated the Stabilization Act (R. 4, 58-59, 84). In the course of that investigation, an inspector of the Wage and Hour Division of the Department of Labor, with the permission of petitioner corporation, examined its payroll records (R. 4, 34-35, 38, 59, 84). On April 17 and 18, 1945, a hearing was held before the Enforcement Division² of the Tenth Regional War Labor Board at which petitioner corporation refused the unanimous request of the Enforcement Division that its books, papers, and records be produced for the scrutiny of the Division (R. 4-5, 14, 38-39,

¹ The National War Labor Board, under a decentralization program, created the Regional War Labor Boards and delegated certain work to them. Among the work so delegated was the handling of cases involving enforcement of the Stabilization Act of 1942, 56 Stat. 765, 50 U. S. C. App., Supp. V, § 961 *et seq.* (R. 55, 62-72; see National War Labor Board Release B 357, December 24, 1942, 1A Commerce Clearing House, *Labor Law Service*, pp. 14510-14511; National War Labor Board Release B 396, January 21, 1943, *id.*, pp. 14512-14514; *id.*, p. 10,029-29A). This area within the jurisdiction of the Tenth Regional War Labor Board included the State of California.

² "Composed of one member representing industry, one representing labor, and one representing the public" (R. 14, 55, 63-64, 71-72).

59, 84). The Enforcement Division thereupon unanimously directed the attorney for the Regional Board to request the National War Labor Board to issue a subpoena *duces tecum* to petitioner corporation to produce its books and records before the Division (R. 5, 40, 52, 59, 84). Thereafter, on May 23, 1945, George W. Taylor, Chairman of the National War Labor Board, "having reasonable cause to believe that the [petitioner] corporation has been and is violating the provisions of the Wage Stabilization Act of 1942 and the Order and Regulations issued thereunder," issued a subpoena and a subpoena *duces tecum* directed to petitioners, requiring them to appear before the Enforcement Division of the Tenth Regional War Labor Board on June 19, 1945, and requiring them further to bring with them

Books, payroll records, ledger sheets, journals, Social Security reports and records, time cards, and any written books and papers kept or maintained by said establishment wherein and whereby there is shown: (1) the payment or payments of wages and salaries by said corporation for the period commencing six months previous to October 3, 1942, and continuing until April 17, 1945, (2) the classifications in existence in said establishment during said period between the date six months prior to October 3, 1942, and April 17, 1945, (3) the wages and salaries paid by said company to persons in its employ be-

tween October 3, 1942, and April 17, 1945, at rates in excess of those paid by said company for particular classifications on and prior to October 3, 1942, (4) the total payroll of persons employed between October 3, 1942, and April 17, 1945, in

certain stated work classifications "at rates in excess of those * * * indicated" (R. 5, 9-12, 14-15, 46-48, 54, 59-60, 84-85). The subpoenas were duly served upon petitioners (R. 5, 84-85). Petitioners did not comply with the subpoenas, but, on June 15, 1945, petitioner corporation brought suit in the district court to restrain petitioner Miller from producing the books and records sought by the subpoena, to restrain him from testifying before the Enforcement Division of the Tenth Regional War Labor Board, and to restrain the Division from holding further hearings concerning said books and records (R. 6, 35-45, 52, 60, 86).³

³ In the injunction suit thus begun, the district court issued a temporary restraining order (R. 86). On July 27, 1945, the defendants in the injunction suit who were members of the Enforcement Division of the Tenth Regional War Labor Board moved to dismiss that suit (R. 53). Thereafter, following the institution of the instant proceeding on August 20, 1945 (R. 2-12), the district court ordered the two actions to be heard together (R. 86-87). On September 18, 1945, the court dissolved the temporary restraining order, refused to issue an injunction, and dismissed petitioner corporation's "amended complaint for injunction" (R. 35-45) "without leave to amend" (R. 74-79, 87). Petitioners did not appeal from these orders of the district court and did not further prosecute the injunction suit. The questions raised in that suit are accordingly no longer in issue.

On August 20, 1945, the Chairman of the National War Labor Board applied to the district court for an order enforcing the subpoenas theretofore issued by him (R. 2-12). Petitioners opposed the application (R. 17-32), denying the authority of the Chairman of the National War Labor Board to issue the subpoenas and denying the authority of the Board, its members, and agents to investigate petitioners' compliance with the Wage Stabilization Act of 1942. On October 9, 1945, the district court issued its findings of fact (R. 82-87) and conclusions of law (R. 88-91) and entered its decree enforcing compliance with the subpoenas (R. 91-93). The district court found that petitioner corporation had refused the unanimous request of the Enforcement Division of the Tenth Regional War Labor Board that it produce its books and records (R. 84, 86); that the Chairman of the National War Labor Board issued the subpoenas "having reasonable cause to believe that the [petitioner] corporation had been and is violating the provisions of the Wage Stabilization Act of 1942 and the Order and Regulations issued thereunder" (R. 84); that the subpoenas were duly served (R. 84-85); that petitioners at no time questioned their "sufficiency, definiteness or form" (R. 85, 81); that the wages paid by petitioner corporation to its employees "affect the cost of living" (R. 85); that the books and papers sought to be reached by the subpoenas were "and now are relevant material and necessary and appropriate" to determine whether peti-

tioner had violated the Stabilization Act (R. 85-86); and that petitioners' refusal to appear before the Enforcement Division of the Tenth Regional War Labor Board with the requested books and papers impeded the progress of the investigation being conducted pursuant to the Stabilization Act and the orders and regulations thereunder (R. 87). The district court concluded that Section 7 of the War Labor Disputes Act, 57 Stat. 166, 50 U. S. C. App., Supp. V, § 1507, *infra*, pp. 21-23, authorizes the Chairman of the National War Labor Board to issue the subpoenas and that, by virtue of that section, the subpoenas could be enforced by the court pursuant to Title III of the Second War Powers Act, 1942 (Act of March 27, 1942, c. 199, 56 Stat. 176, 177, 50 U. S. C. App., Supp. V, § 633, *infra*, pp. 18-20, R. 88); that the subpoenas were "valid" and "sufficient, definite and in proper form" (R. 88); that petitioner corporation "is within the probable jurisdiction of the National War Labor Board in connection with the Board's responsibilities under the Stabilization Act of 1942" (R. 89); and that the Regional War Labor Board had the power to determine whether wage or salary payments had been made in violation thereof (R. 89).

On appeal (R. 94), the court below affirmed the judgment of the district court (R. 124-125).⁴

⁴ On February 18, 1946, the court below, on motion of respondent, W. Willard Wirtz, Chairman of the National Wage Stabilization Board, ordered him substituted as a party in lieu of George Taylor, Chairman of the National War Labor Board (R. 114-115).

ARGUMENT

The court below held that a "succession of statutes and orders explicitly confers the subpoena power in the Board for its inquiry to determine the existence of wage overpayments" (R. 122), and accordingly affirmed the judgment of the district court which required petitioners to comply with the subpoenas (R. 89-93, 124-125). The court below rejected petitioners' contentions that there were constitutional objections to the exercise of the subpoena power thus conferred (R. 122-123) and held further that the "termination" of the National War Labor Board on December 31, 1945, by Executive Order 9672, 11 F. R. 221, *infra*, pp. 25-27, did not result in the loss of the power "to issue subpoenas in inquiries respecting wages" but that the power and duty to issue such subpoenas was "a function * * * transferred to the National Wage Stabilization Board" of which respondent is Chairman (R. 123-124). The decision below is clearly correct in each of its aspects.

1. The subpoenas were lawfully issued and were properly enforced by the district court. Under the Stabilization Act of October 2, 1942, 56 Stat. 765, 50 U. S. C. App., Supp. V, § 961, *et seq.*, the President was "authorized and directed * * * to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living" (*infra*, p. 20), and to exercise such power and authority "through such department, agency, or officer as he shall direct." 50 U. S. C. App., Supp. V, § 962;

infra, p. 20. Employers were prohibited from paying and employees from receiving "wages or salaries in contravention of the regulations promulgated by the President" who was directed to "prescribe the extent" to which any improper wage or salary payment should be "disregarded" by the various governmental agencies "in determining the costs or expenses of any employer for the purposes of any other law or regulation." 50 U. S. C. App., Supp. V, § 965 (a); *infra*, pp. 20-21. Pursuant to this congressional direction, the President, on October 3, 1942, issued Executive Order 9250, *infra*, p. 25, by which he designated the National War Labor Board, which had, on January 12, 1942, been established by Executive Order 9017, 7 F. R. 237, *infra*, pp. 23-24, for the purpose of peacefully adjusting labor disputes, as the agency to carry out "the wage policies stated" in Executive Order 9250 or in the policy directives issued thereunder. On June 25, 1943, the Congress, in the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App., Supp. V, § 1501 *et seq.*, *infra*, pp. 21-23, conferred upon "the National War Labor Board * * * established by Executive Order Numbered 9017" certain "powers and duties" "in addition to all powers conferred on it by * * * any Executive order or regulation issued under the provisions of the Act of October 2, 1942, * * * and by any other statute." Section 7 (a), 50 U. S. C. App., Supp. V, § 1507 (a); *infra*, p. 21. Among such additional "powers and duties" were the following: In Section

7 (a) (3) the Board was authorized "To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute, and to issue subpoenas requiring such attendance or production" (*infra*, p. 22) and in Section 7 (a) (4) it was authorized to apply to the district courts for orders enforcing such subpoenas. *Infra*, p. 22. In Section 7 (b) the War Labor Disputes Act provided that "The Board, by its Chairman, shall have power to issue subpoenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof." *Infra*, p. 22. Section 7 (b) further provided that such subpoenas were to "be enforceable in the same manner, and subject to the same penalties, as subpoenas issued by the President under title III of the Second War Powers Act, approved March 27, 1942." *Infra*, pp. 22-23.

Petitioners deny, however, that Section 7 (b) of the War Labor Disputes Act, pursuant to which the subpoenas in question were issued,⁵

⁵ Each subpoena contains the following paragraph:

"Fail not under the penalties provided by Section 7 of the Act of Congress, enacted June 25, 1943, and Title III of the Second War Powers Act, approved March 27, 1942" (R. 10, 12, 46, 48).

The reference to the latter statutory provision clearly evidences that the subpoenas were issued under Section 7 (b)

grants power to the Board to issue subpoenas in a proceeding "which does not involve a labor dispute" (Pet. 2, 16-17). But the short answer to petitioners' contention is the plain language of Section 7 (b), *infra*, pp. 22-23. The construction for which petitioners argue would, moreover, render superfluous one portion of the Act, since ample powers with respect to the issuance and enforcement of subpoenas in aid of the Board's activities with respect to labor disputes are to be found in Section 7 (a) (3) and (4), *infra*, p. 22. Those subpoena provisions refer specifically to labor disputes. Section 7 (b), on the contrary, refers to the subpoena of witnesses and records "material to *any* inquiry or hearing before the Board or any designated member or agent thereof." [Italics supplied.] The only meaning which can be ascribed to Section 7 (b) is that which would make subpoena powers available in aid of functions of the Board other than those involving labor disputes—functions which were recognized by the Congress in Section 7 of the Act. The court below was clearly correct in avoiding a construction which would render part of Section 7 surplusage. *Ex parte Public National Bank of New York*, 278 U. S. 101; Sutherland, *Statutory Construction* (3d ed. 1943) § 4705.

of the War Labor Disputes Act (*infra*, pp. 22-23), since only in Section 7 (b) is Title III of the Second War Powers Act, 1942 (*infra*, pp. 18-20) referred to.

Since they were properly issued by the Chairman of the National War Labor Board pursuant to Section 7 (b) of the War Labor Disputes Act (*infra*, pp. 22-23), the district court was correct in enforcing the subpoenas pursuant to Title III of the Second War Powers Act, 1942 (*infra*, pp. 18-20).

2. As the court below found, there is no merit to petitioners' argument (Pet. 2, 5-6, 10, 18-22) that the subpoenas violated the right guaranteed by the Fourth Amendment of freedom from unreasonable searches and seizures. The subpoenas (R. 9-12, 46-48) have no oppressive features. They are specific. They were lawfully issued by the Chairman of the National War Labor Board who had "reasonable cause to believe that the [petitioner] corporation had been and is violating the provisions of the Wage Stabilization Act of 1942 and the Order and Regulations issued thereunder" (R. 84). The subpoena *duces tecum* (R. 10-12, 47-48) calls for records clearly relevant to the inquiry which the Board was conducting under the authority of the Stabilization Act and the War Labor Disputes Act (R. 85-86). It describes in detail the data required and defines with exactitude the period for which they are required. It calls for such books and payroll records as are commonly kept by business people (R. 50). It seeks nothing unusual or untoward. Moreover, petitioners "at no time questioned the sufficiency, definiteness or form of the subpoena

and subpoena duces tecum" (R. 85). As this Court has held, the Fourth Amendment, if applicable with reference "to the production of corporate records and papers in response to a subpoena or order authorized by law and safeguarded by judicial sanction, * * * at the most guards against abuse only by way of too much indefiniteness or breadth in the things required to be 'particularly described,' if also the inquiry is one the demanding agency is authorized by law to make and the materials specified are relevant. The gist of the protection is in the requirement * * * that the disclosure sought shall not be unreasonable." *Oklahoma Press Publishing Co. v. Walling*, No. 61, Oct. T., 1945, decided February 11, 1946, p. 15 of slip opinion. See also *Hale v. Henkel*, 201 U. S. 43, 72-73; *Wilson v. United States*, 221 U. S. 361, 376; *Baltimore & Ohio R. R. v. Interstate Commerce Comm.*, 221 U. S. 612, 622; *Essgee Co. v. United States*, 262 U. S. 151, 156-157; *Endicott Johnson Corp. v. Perkins*, 317 U. S. 501; *United States v. Bausch & Lomb Co.*, 321 U. S. 707, 727.

Petitioners claim that the information which was used as the basis for issuing the subpoenas was illegally obtained and that in this way also petitioner corporation's rights under the Fourth Amendment were violated (Pet. 19-22). This claim of petitioners is based upon the inspection of petitioner corporation's books that was made by an inspector of the Wage and Hour Division

of the Department of Labor prior to the hearing before the Enforcement Division of the Tenth Regional War Labor Board (R. 34-35, 38, 59, 84). Petitioners' complaint appears to be that while the inspector stated that she was from the Department of Labor, she "made no reference to the War Labor Board" (R. 34-35, 38). The short answer to petitioners' contention is that the inspection by the Labor Department inspector was fully authorized under the law. Cf. *Zap v. United States*, No. 489, Oct. T., 1945, decided June 10, 1946. By Executive Order 9250, *infra*, p. 25, the National War Labor Board was authorized by the President, in carrying out the Government's wage stabilization policies, "to avail itself of the services and facilities of such * * * Federal departments and agencies as, in the discretion of the National War Labor Board, may be of assistance to the Board." The subsequent congressional addition to the powers of the Board, contained in the War Labor Disputes Act, did not subtract in any way from the authority thus granted to the Board. Accordingly, in carrying out its functions under the Act and the Executive Order, it has been the common practice of the Board to utilize extensively the offices and personnel of the Wage and Hour Division of the Department of Labor. See National War Labor Board Release No. B 273, October 29, 1942, 1A Commerce Clearing House, *Labor Law Service*, p. 14,501.

Silverthorne Lumber Co. v. United States, 251 U. S. 385, cited by petitioners as being in conflict with the decision below (Pet. 6, 22), presented a situation quite different from that of the instant case. While the officers of the Silverthorne Company were detained under arrest in a criminal proceeding, Government representatives "without a shadow of authority" (251 U. S. at 390) entered the Company's office and removed all the books and records. "Copies of material papers were made and a new indictment was framed based upon the knowledge thus obtained. The District Court ordered a return of the originals but impounded the * * * copies." 251 U. S. at 391. Subpoenas were then issued to produce the originals and the district court held that the refusal to obey an order requiring such production was a contempt. This Court reversed. In the instant case, however, the proceeding in question is an administrative proceeding of a civil nature and not a criminal proceeding. The Labor Department inspector who examined petitioner corporation's books was fully authorized by law to do so and did so with petitioners' consent (R. 34, 84). No indictment or charges of any sort resulted from the inspection. And the records here sought by subpoena are ordinary wage and salary records kept by petitioner corporation in the usual course of business and are not, as further distinguished from the situation in the *Silverthorne* case, documents knowledge of whose specific existence was

obtained from the Labor Department inspector's inspection. Cf. *Essgee Co. v. United States*, 262 U. S. 151, 156-157. *Gouled v. United States*, 255 U. S. 298, also cited by petitioners as in conflict with the decision below (Pet. 6, 20-21), is no more in point than is the *Silverthorne* decision.

3. Petitioners assert that "If the Chairman of the National War Labor Board had the authority to issue the subpoena, the President had no power to transfer such authority to respondent, as Chairman of the National Wage Stabilization Board" (Pet. 10, 23-24). This argument also lacks merit. It is to be noted, first, that the subpoenas in question were issued by the Chairman of the National War Labor Board and not by the Chairman of the National Wage Stabilization Board. Moreover, there can be no question but that the authority to issue such subpoenas is presently in the chairman of the latter Board. The First War Powers Act, 1941 (Act of December 18, 1941, c. 593, 55 Stat. 838) empowers the President to redistribute the "functions, duties, and powers" of the several executive agencies (*infra*, p. 18). By Executive Order 9672, issued by the President on December 31, 1945, as amended, 11 F. R. 221, 5381, *infra*, pp. 25-27, the President established the National Wage Stabilization Board and transferred to it "all the present powers, functions, and responsibilities of the National War Labor Board * * * relating to the stabilization of wages and salaries for the purpose of carrying out the objectives author-

ized and directed by * * * the Stabilization Act of 1942, as amended, in accordance with the policies and procedures provided by Executive orders and regulations issued pursuant" thereto. Clearly, as the court below held, "the instant inquiry of the War Labor Board with the right we hold it has to issue subpoenas is a function and duty so transferred to the National Wage Stabilization Board" (R. 123-124).

CONCLUSION

The decision below is clearly correct. There is no conflict of authorities. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

JOHN F. SONNETT,
Assistant Attorney General.

PAUL A. SWEENEY,
ABRAHAM J. HARRIS,
Attorneys.

JULY 1946.

APPENDIX

A. STATUTES

1. Section 1 of the First War Powers Act, 1941, December 18, 1941, 55 Stat. 838, 50 U. S. C. App., Supp. V, § 601, provides, in part, as follows:

For the national security and defense, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the Army and Navy, the President is hereby authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, governmental corporation, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this title, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary * * *

2. Title III of the Second War Powers Act, 1942, March 27, 1942, 56 Stat. 176, 177, 50 U. S. C. App., Supp. V, § 633, provides, in part, as follows:

(4) For the purpose of obtaining any information, verifying any report required, or making any investigation pursuant to paragraph (3), the President may admin-

ister oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: * * * No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpoena, or in any action or proceeding which may be instituted under this subsection (a), on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. * * *

(6) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States and the courts of the Philippine Islands shall have

jurisdiction of violations of this subsection (a) or any rule, regulation, or order or subpena thereunder, whether heretofore or hereafter issued, and of all civil actions under this subsection (a) to enforce any liability or duty created by, or to enjoin any violation of, this subsection (a) or any rule, regulation, order, or subpena thereunder whether heretofore or hereafter issued.. * * *

3. The Stabilization Act of 1942, October 2, 1942, 56 Stat. 765, 50 U. S. C. App., Supp. V, § 961 *et seq.*, provides, in part, as follows:

[SECTION 1.] In order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. * * *

SEC. 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. * * *

SEC. 5. (a) No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act. The President shall also prescribe the extent to which any wage or salary payment made in contravention of such regulations shall be disregarded by the executive departments

and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

4. Section 7 of the War Labor Disputes Act, June 25, 1943, 57 Stat. 163, 166, 50 U. S. C. App., Supp. V, § 1507, provides, in part, as follows:

SEC. 7. (a) The National War Labor Board (hereinafter in this section called the "Board"), established by Executive Order Numbered 9017, dated January 12, 1942, in addition to all powers conferred on it by section 1 (a) of the Emergency Price Control Act of 1942, and by any Executive order or regulation issued under the provisions of the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes," and by any other statute, shall have the following powers and duties:

(1) Whenever the United States Conciliation Service (hereinafter called the 'Conciliation Service') certifies that a labor dispute exists which may lead to substantial interference with the war effort, and cannot be settled by collective bargaining or conciliation, to summon both parties to such dispute before it and conduct a public hearing on the merits of the dispute. If in the opinion of the Board a labor dispute has become so serious that it may lead to substantial interference with the war effort, the Board may take such action on its own motion. At such hearing both parties shall be given full notice and opportunity to be heard, but the failure of either party to appear shall not deprive the Board of jurisdiction to proceed to a hearing and order.

(2) To decide the dispute, and provide by order the wages and hours and all other terms and conditions (customarily included in collective-bargaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board. In making any such decision the Board shall conform to the provisions of the Fair Labor Standards Act of 1938, as amended; the National Labor Relations Act; the Emergency Price Control Act of 1942, as amended; and the Act of October 2, 1942, as amended, and all other applicable provisions of law; and where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all the circumstances of the case.

(3) To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute, and to issue subpoenas requiring such attendance or production.

(4) To apply to any Federal district court for an order requiring any person within its jurisdiction to obey a subpoena issued by the Board; and jurisdiction is hereby conferred on any such court to issue such an order.

(b) The Board, by its Chairman, shall have power to issue subpoenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof. Such subpoenas shall be enforceable in the same manner, and subject to the same penalties,

as subpoenas issued by the President under title III of the Second War Powers Act, approved March 27, 1942.

B. EXECUTIVE ORDERS

1. Executive Order 9017, January 12, 1942, 7 F. R. 237, provides, in part, as follows:

Whereas by reason of the state of war declared to exist by joint resolutions of the Congress, approved December 8, 1941 and December 11, 1941, respectively (Public Laws Nos. 328, 331, 332, 77th Congress), the national interest demands that there shall be no interruption of any work which contributes to the effective prosecution of the war; and

Whereas as a result of a conference of representatives of labor and industry which met at the call of the President on December 17, 1941, it has been agreed that for the duration of the war there shall be no strikes or lockouts, and that all labor disputes shall be settled by peaceful means, and that a National War Labor Board be established for the peaceful adjustment of such disputes:

Now, Therefore, by virtue of the authority vested in me by the Constitution and the statutes of the United States, it is hereby ordered:

1. There is hereby created in the Office for Emergency Management a National War Labor Board, hereinafter referred to as the Board. The Board shall be composed of twelve special commissioners to be appointed by the President. Four of the members shall be representative of the public; four shall be representative of employees; and four shall be representative of

employers. The President shall designate the Chairman and Vice-Chairman of the Board from the members representing the public. The President shall appoint four alternate members representative of employees and four representative of employers, to serve as Board members in the absence of regular members representative of their respective groups. Six members or alternate members of the Board, including not less than two members from each of the groups represented on the Board, shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board.

* * * * *

3. The procedures for adjusting and settling labor disputes which might interrupt work which contributes to the effective prosecution of the war shall be as follows: (a) The parties shall first resort to direct negotiations or to the procedures provided in a collective bargaining agreement. (b) If not settled in this manner, the Commissioners of Conciliation of the Department of Labor shall be notified if they have not already intervened in the dispute. (c) If not promptly settled by conciliation, the Secretary of Labor shall certify the dispute to the Board: *Provided, however,* That the Board in its discretion after consultation with the Secretary may take jurisdiction of the dispute on its own motion. After it takes jurisdiction, the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board.

2. Executive Order 9250, October 3, 1942, 7 F. R. 7871, provides, in part, as follows:

**TITLE III—ADMINISTRATION OF
WAGE AND SALARY POLICY**

* * * * *

2. The National War Labor Board shall constitute the agency of the Federal Government authorized to carry out the wage policies stated in this Order, or the directives on policy issued by the Director under this Order. The National War Labor Board is further authorized to issue such rules and regulations as may be necessary for the speedy determination of the propriety of any wage increases or decreases in accordance with this Order, and to avail itself of the services and facilities of such State and Federal departments and agencies as, in the discretion of the National War Labor Board, may be of assistance to the Board.

3. Executive Order 9672, December 31, 1945, as amended, 11 F. R. 221, 5381, provides, in part, as follows:

1. (a) There is hereby established within the Department of Labor a Board to be known as the National Wage Stabilization Board, hereinafter referred to as the Board. * * *

* * * * *

2. The Board shall have all the present powers, functions, and responsibilities of the National War Labor Board (established by Executive Order No. 9017 of January 12, 1942 and transferred to the Department of Labor by Executive Order No. 9617 of September 19, 1945) relating to the stabilization of wages and salaries for the pur-

pose of carrying out the objectives authorized and directed by the Emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended, in accordance with the policies and procedures provided by Executive orders and regulations issued pursuant to these Acts. * * *

3. Any dispute cases on which final action may not have been taken by the National War Labor Board prior to its termination shall be returned by said board to the parties. The Board shall have all the powers, functions and responsibilities of the National War Labor Board relating to the disposition of dispute cases for the following purposes only:

(a) The continued operation of the tripartite commissions, heretofore established by the National War Labor Board to carry out its directive orders relating to the steel, textile, and meat-packing industries, with the duties, powers and responsibilities heretofore conferred on said agencies, subject to any modification thereof which may be made by the Board;

(b) The appointment of arbitrators as may be necessary under National War Labor Board orders or collective bargaining agreements;

(c) The disposition of applications under Section 5 of the War Labor Disputes Act and the receipt of notices under Section 8 of that Act.

The Board shall have the powers of subpoena conferred upon the National War Labor Board by Section 7 of the War Labor Disputes Act.

* * * * *

5. * * * The presently effective rules, regulations, procedures, and orders of the

National War Labor Board relating to any function vested in the National Wage Stabilization Board by this order shall continue to be effective in accordance with their terms except as they may be inconsistent with this order or be modified or revoked from time to time by the Board. Any matter relating to the functions transferred by this order and now pending before the National War Labor Board may be acted upon by the National Wage Stabilization Board with the same validity and effect as though such action had been taken by the National War Labor Board.